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8
9 **BEFORE THE**
BOARD OF REGISTERED NURSING
10 **DEPARTMENT OF CONSUMER AFFAIRS**
STATE OF CALIFORNIA

11 In the Matter of the Accusation Against:

Case No. **2010-501**

12 **BRANDON JACK BURNS**
13 **31268 Kestrel Way**
14 **Winchester, CA 92596**

A C C U S A T I O N

15 **Registered Nurse License No. 659114**

16 Respondent.

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19 Complainant alleges:

20 **PARTIES**

21 1. Louise R. Bailey, M.Ed., RN (Complainant) brings this Accusation solely in her
22 official capacity as the Interim Executive Officer of the Board of Registered Nursing, Department
23 of Consumer Affairs.

24 2. On or about June 20, 2005, the Board of Registered Nursing issued Registered Nurse
25 License No. 659114 to Brandon Jack Burns (Respondent). The Registered Nurse License was in
26 full force and effect at all times relevant to the charges brought herein and will expire on April 30,
27 2011, unless renewed.

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1 “(a) Obtain or possess in violation of law...or except as directed by a licensed physician
2 and surgeon, dentist, or podiatrist administer to himself...or furnish or administer to another, any
3 controlled substance as defined in Division 10 (commencing with Section 11000) of the Health
4 and Safety Code or any dangerous or dangerous device as defined in Section 4022.

5 “(b) Use any controlled substance as defined in Division 10 (commencing with Section
6 11000) of the Health and Safety Code, or any dangerous drug or dangerous device as defined in
7 Section 4022, or alcoholic beverages, to an extent or in a manner dangerous or injurious to
8 himself or herself, any other person, or the public or to the extent that such use impairs his or her
9 ability to conduct with safety to the public the practice authorized by his or her license.

10 “(c) Be convicted of a criminal offense involving the prescription, consumption, or
11 self-administration of any of the substances described in subdivisions (a) and (b) of this section,
12 or the possession of, or falsification of a record pertaining to, the substances described in
13 subdivision (a) of this section, in which event the record of the conviction is conclusive evidence
14 thereof.

15 “....”

16 8. Section 490 of the Code provides, in pertinent part, that a board may suspend or
17 revoke a license on the ground that the licensee has been convicted of a crime substantially
18 related to the qualifications, functions, or duties of the business or profession for which the
19 license was issued.

20 9. Section 492 of the Code states:

21 “Notwithstanding any other provision of law, successful completion of any diversion
22 program under the Penal Code, or successful completion of an alcohol and drug problem
23 assessment program under Article 5 (commencing with section 23249.50) of Chapter 12 of
24 Division 11 of the Vehicle Code, shall not prohibit any agency established under Division 2
25 ([Healing Arts] commencing with Section 500) of this code, or any initiative act referred to in that
26 division, from taking disciplinary action against a licensee or from denying a license for
27 professional misconduct, notwithstanding that evidence of that misconduct may be recorded in a
28 record pertaining to an arrest.

“This section shall not be construed to apply to any drug diversion program operated by any agency established under Division 2 (commencing with Section 500) of this code, or any initiative act referred to in that division.”

10. Section 493 of the Code states:

“Notwithstanding any other provision of law, in a proceeding conducted by a board within the department pursuant to law to deny an application for a license or to suspend or revoke a license or otherwise take disciplinary action against a person who holds a license, upon the ground that the applicant or the licensee has been convicted of a crime substantially related to the qualifications, functions, and duties of the licensee in question, the record of conviction of the crime shall be conclusive evidence of the fact that the conviction occurred, but only of that fact, and the board may inquire into the circumstances surrounding the commission of the crime in order to fix the degree of discipline or to determine if the conviction is substantially related to the qualifications, functions, and duties of the licensee in question.

"As used in this section, 'license' includes 'certificate,' 'permit,' 'authority,' and 'registration.'"

REGULATORY PROVISIONS

11. California Code of Regulations, title 16, section 1444, states:

“A conviction or act shall be considered to be substantially related to the qualifications, functions or duties of a registered nurse if to a substantial degree it evidences the present or potential unfitness of a registered nurse to practice in a manner consistent with the public health, safety, or welfare. Such convictions or acts shall include but not be limited to the following:

“(a) Assaultive or abusive conduct including, but not limited to, those violations listed in subdivision (d) of Penal Code Section 11160.

“(b) Failure to comply with any mandatory reporting requirements.

“(c) Theft, dishonesty, fraud, or deceit.

“(d) Any conviction or act subject to an order of registration pursuant to Section 290 of the Penal Code.”

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12. California Code of Regulations, title 16, section 1445, states in pertinent part:

• • • •

“(b) When considering the suspension or revocation of a license on the grounds that a registered nurse has been convicted of a crime, the board, in evaluating the rehabilitation of such person and his/her eligibility for a license will consider the following criteria:

“(1) Nature and severity of the act(s) or offense(s);

"(2) Total criminal record;

"(3) The time that has elapsed since commission of the act(s) or offenses(s);

“(4) Whether the licensee has complied with any terms of parole, probation, restitution or any other sanctions lawfully imposed against the licensee;

“(5) If applicable, evidence of expungement proceedings pursuant to Section 1203.4 of the Penal Code;

"(6) Evidence, if any, of rehabilitation submitted by the licensee."

COSTS

13. Section 125.3 of the Code provides, in pertinent part, that the Board may request the administrative law judge to direct a licensee found to have committed a violation or violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case.

DRUG

14. Marijuana is classified as a Schedule I controlled substance by virtue of Health and Safety Code section 11054 (d) (13), and is a dangerous drug within the meaning of section 4022 (c) of the Business and Professions Code.

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FIRST CAUSE FOR DISCIPLINE

(January 9, 2004 Criminal Conviction for Possession of Marijuana on September 26, 2003)

15. Respondent is subject to disciplinary action under sections 490, 2761(f), and 2762(c) of the Code in that he was convicted of a crime involving marijuana that is substantially related to the qualifications, functions, and duties of a registered nurse. The circumstances are as follows:

16. On or about September 26, 2003, Respondent was arrested and charged with violations of the Health and Safety Code sections 11359 (possession of marijuana for sale) and 11358 (cultivating marijuana).

17. On or about January 9, 2004, in a criminal proceeding entitled *People of the State of California v. Brandon Jack Burns*, San Diego Superior Court case no. CD177790, Respondent was convicted on his plea of guilty for violating Health and Safety Code section 11358 (cultivating marijuana), a felony. Respondent admitted that he unlawfully cultivated marijuana. The district attorney agreed to a future withdrawal of the plea and re-entry of a plea to a misdemeanor at the time of sentencing pending no further criminal violations. As a result of this plea agreement, the balance of the charges were dismissed.

18. On or about May 26, 2006, Respondent's motion to withdraw his guilty plea for violating Health and Safety Code section 11358 was granted. The People's motion to amend the complaint was granted, to add a third charge for violation of Health and Safety Code section 11357(a) (possession of marijuana), a misdemeanor. On or about May 26, 2006, Respondent was convicted on his plea of guilty for violating Health and Safety Code section 11357(a).

19. As a result of this conviction, Respondent was sentenced to summary probation for three years, expiring on April 10, 2008. He was also committed to the custody of the Sheriff for one day, ordered to pay fines and fees in the amount of \$414.00, and ordered to violate no laws.

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1 THIRD CAUSE FOR DISCIPLINE

2 (Use of Alcohol in a Manner Dangerous to Self or Others)

3 25. Respondent is subject to disciplinary action under section 2762(b) of the Code in that
4 on or about August 15, 2008, Respondent used alcohol to an extent as to dangerous to himself or
5 others, as set forth in paragraphs 20 through 24, above.

6 PRAAYER

7 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,
8 and that following the hearing, the Board of Registered Nursing issue a decision:

9 1. Revoking or suspending Registered Nurse License No. 659114, issued to Respondent
10 Brandon Jack Burns;

11 2. Ordering Respondent Brandon Jack Burns to pay the Board of Registered Nursing the
12 reasonable costs of the investigation and enforcement of this case, pursuant to Business and
13 Professions Code section 125.3;

14 3. Taking such other and further action as deemed necessary and proper.
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17 DATED: 4/13/10

Louise R. Bailey
LOUISE R. BAILEY, M.ED., RN
Interim Executive Officer
Board of Registered Nursing
Department of Consumer Affairs
State of California
Complainant

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